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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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SENNIGER POWERS LLP (MSFT)
ONE METROPOLITAN SQUARE, 16TH FLOOR
ST. LOUIS, MO 63102

EXAMINER
SWEARINGEN, JEFFREY R

ART UNIT	PAPER NUMBER
2145	

NOTIFICATION DATE	DELIVERY MODE
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

uspatents@senniger.com

	Application No.	Applicant(s)
Office Action Summary	10/634,937	KOETKE ET AL.
	Examiner	Art Unit	
	Jeffrey R. Swearingen	2145	

-- *The MAILING DATE of this communication appears on the cover sheet with the correspondence address* --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
  Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) ☒ Responsive to communication(s) filed on <u>27 March 2008</u>.

2a) ☒ This action is **FINAL.**   2b) ☐ This action is non-final.

3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle,* 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) ☒ Claim(s) <u>1-50</u> is/are pending in the application.

    4a) Of the above claim(s) <u>11,28,29 and 34-41</u> is/are withdrawn from consideration.

5) ☐ Claim(s) _____ is/are allowed.

6) ☒ Claim(s) <u>1,2,4-10,12-27,30-33 and 42-50</u> is/are rejected.

7) ☐ Claim(s) _____ is/are objected to.

8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) ☐ The specification is objected to by the Examiner.

10) ☒ The drawing(s) filed on <u>05 August 2003</u> is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a) ☐ All   b) ☐ Some * c) ☐ None of:

      1. ☐ Certified copies of the priority documents have been received.

      2. ☐ Certified copies of the priority documents have been received in Application No. _____.

      3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)

2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
    Paper No(s)/Mail Date _____.

4) ☐ Interview Summary (PTO-413)
    Paper No(s)/Mail Date. _____.

5) ☐ Notice of Informal Patent Application

6) ☐ Other: _____.

DETAILED ACTION

Election/Restrictions

1.   Claims 11, 28-29, 34-41 are withdrawn from further consideration pursuant to 37 CFR 1.142(b),

as being drawn to a nonelected invention, there being no allowable generic or linking claim. Applicant

timely traversed the restriction (election) requirement in the reply filed on 3/27/2008.

2.   Applicant's traversal is not persuasive. Applicant failed to provide any evidence of how any

reliable searches for the two inventions would necessarily co-extend with each other. Applicant

presented arguments of how the claim language was similar between the two claims, but failed to provide

evidence that the withdrawal of the restriction would not impose serious burden upon the Examiner. A

restriction requirement cannot be properly traversed with a cost-benefit analysis stating that the burden

imposed upon Applicant to maintain two separate patents which have not been issued at the current date

would be greater than the burden upon the Office. The restriction requirement is made final.

Claim Rejections - 35 USC § 102

3.   The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for

the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public
> use or on sale in this country, more than one year prior to the date of application for patent in the United
> States.

4.   Claims 1-2, 4-10, 12-27, 30-33, and 42-50 are rejected under 35 U.S.C. 102(b) as being

anticipated by Desai et al. (US 5,781,703).

5.   In regard to claim 1, 10, 12, 27, Desai disclosed:

> *dispatching a first request from the client to a server, said first request specifying a remote*
>
> *procedure call (RPC);* column 4, lines 24-32
>
> *receiving a first response from the server, wherein the first response corresponds to a result of*
>
> *the RPC specified by the first request;* column 6, lines 10-42

in response to the received result of the RPC specified by the first response, measuring a latency from the client's dispatch of the first request to the client's receipt of the first response from the server; column 6, lines 10-42

appending the latency information to a second request; and column 6, lines 6-10

dispatching the second request appended with the latency information from the client to the server, said second request including another RPC different from the RPC in the first request. Column 6, lines 6-10

6.   In regard to claim 2, Desai disclosed:

the client is a messaging client, and wherein the server is a messaging server. Column 4, lines 5-14

7.   In regard to claim 4, Desai disclosed:

accumulating the latency information from the client at the server. Column 6, lines 6-10

8.   In regard to claim 5, Desai disclosed:

accumulating the latency information for a plurality of clients at the server. Column 6, lines 6-10

9.   In regard to claim 6, Desai disclosed:

accumulating the latency information for a plurality of clients and a plurality of servers at the server. Column 6, lines 6-10

10.   In regard to claim 7, Desai disclosed:

each of the plurality of servers is a different type of messaging server. Column 4, lines 5-15

11.   In regard to claim 8, Desai disclosed:

the plurality of servers includes at least one or more of the following: mail servers, public folder servers, and calendar/scheduling servers. Column 4, lines 5-15

12.   In regard to claim 9, Desai disclosed:

the client is an e-mail client, and wherein the server is an e-mail server. Column 4, lines 5-15

13.   In regard to claim 13, Desai disclosed:

receiving the first request at the server; recording, at the server, a request received time for the first request; recording, at the server, a response initiation time for the first response; calculating a server

processing time for the first request/response pair comprising a difference between the response initiation

time for the first response and the request received time for the first request; sending the first response to

the client; sending the server processing time for the first request/response pair to the client; and

recording, at the client, the server processing time for the first request/response pair. Column 6, lines 10-

42

14.   In regard to claim 14, Desai disclosed:

     the first response comprises the server processing time for the first request/response pair.

Column 6, lines 10-42

15.   In regard to claim 15, Desai disclosed:

     the performance data comprises the server processing time for the first request/response pair.

Column 6, lines 10-42

16.   In regard to claim 16, 31, Desai disclosed:

     receiving the second request at the server; parsing the performance data from the second

request; and updating at least one computer system memory resident performance data accumulator with

the performance data. Column 6, lines 10-42

17.   In regard to claim 17, Desai disclosed:

     the at least one computer system memory resident performance data accumulator comprises: a

request count accumulator; a request class count accumulator; a request rate accumulator; a request

class rate accumulator; and a count of a performance data parameter value exceeding a threshold

accumulator. Column 6, lines 10-42

18.   In regard to claim 18, Desai disclosed:

     generating an event log entry if the performance data triggers a performance data event and the

performance data event would not contribute to a performance data event storm. Column 6, lines 43-49

19.   In regard to claim 19, Desai disclosed:

     triggering a performance data event comprises: a ratio of successful requests to total requests

dropping below a minimum; and an average request latency rising above a maximum. Column 6, lines

43-49

20.   In regard to claim 20, Desai disclosed:

        contributing to a performance data event storm comprises generating more than a maximum

number of performance data events in a particular performance data event class during a period of time.

Column 6, lines 43-49

21.   In regard to claim 21, Desai disclosed:

        the performance data further comprises client server communications session invariant

performance data context, and the performance data context comprising at least one performance data

context identifier. Column 6, lines 10-31

22.   In regard to claim 22, Desai disclosed:

        the performance data context further comprises one or more of the following: a client computer

system host name; a client user name; a client network adaptor name; a client network adaptor speed;

and a client network protocol address. Column 6, lines 10-31

23.   In regard to claim 23, Desai disclosed:

        the performance data further comprises one or more of the following: a server computer system

host name; a server network domain name; and a server type. Column 6, lines 10-31

24.   In regard to claim 24, Desai disclosed:

        the performance data context further comprises one or more of the following: a globally unique

identifier (GUID) associated with a client computer operating system process; and information regarding

the client computer operating system process. Column 6, lines 10-31

25.   In regard to claim 25, Desai disclosed:

        the performance data context further comprises a globally unique identifier (GUID) associated

with a client server communications session. column 6, lines 10-31

26.   In regard to claim 26, Desai disclosed:

        the second request further comprises an indication of at least one service desired of the server by

the client. Column 6, lines 10-31

27.   Claim 30 is substantially the same as claims 12 and 13.

28.   Claim 32 is substantially the same as claims 12, 13 and 17.

29.   In regard to claim 33, Desai disclosed:

receiving the maximum performance data age threshold from the server. Column 6, lines 10-31

30.   In regard to claim 42, Desai disclosed:

a performance data remote procedure call (RPC) extension tag included in an RPC request for prefacing performance data associated with a client, said performance data RPC extension tag comprising: a performance data format version field; at least one performance data format flag; a performance data size field; and an uncompressed performance data size field; and column 6, lines 10-31

at least one performance data block relating to the performance data RPC extension tag, said at least one performance data block comprising: a performance data block header, comprising: a performance data block size field; a performance data block format version field; and a performance data block type field; and a performance data block body, wherein the performance data RPC extension tag and the at least one performance data block are incorporated in an RPC in each request/response cycle of the transmission of the RPCs. Column 6, lines 10-31

31.   In regard to claim 43, Desai disclosed:

the at least one performance data format flag is selected from a group consisting of compress performance data and obfuscate performance data. column 6, lines 10-31

32.   In regard to claim 44, Desai disclosed:

the performance data block body comprises: a variable byte array storage area; and at least one string type field comprising an offset to a location in the variable byte array storage area where the value of the string type field is stored. column 6, lines 10-31

33.   In regard to claim 45, Desai disclosed:

the performance data block type field indicates that the performance data block body contains client information performance data context pertaining to a client in a client server network, and wherein the performance data block body comprises: a client-generated client information performance data context identifier; a name of a computer system hosting the client; a name of a user utilizing the client; a

network protocol address associated with the client; a name of a network adapter associated with the client; and a speed of the network adapter associated with the client. column 6, lines 10-31

34.   In regard to claim 46, Desai disclosed:

the performance data block type field indicates that the performance data block body contains server information performance data context pertaining to a server in a client server network, and wherein the performance data block body comprises: a client-generated server information performance data context identifier; a name of the server; a network domain name of the server; and a server type associated with the server. column 6, lines 10-31

35.   In regard to claim 47, Desai disclosed:

the performance data block type field indicates that the performance data block body contains client-generated performance data pertaining to a successful request/response pair between a client and a server in a client server network, and wherein the performance data block body comprises: a client-generated request identifier associated with the successful request/response pair; a round trip latency corresponding to a difference between a time at which the client initiated the successful request/response pair and a time at which the client received the response; and a server processing time corresponding to a difference between a time at which the server received the request of the successful request/response pair and a time at which the server initiated the response. column 6, lines 10-31

36.   In regard to claim 48, Desai disclosed:

the performance data block size is 14 bytes. column 6, lines 10-31

37.   In regard to claim 49, Desai disclosed:

the performance data block type field indicates that the performance data block body contains client-generated performance data pertaining to a failed request/response pair between a client and a server in a client server network, and wherein the performance data block body comprises: a client-generated request identifier associated with the failed request/response pair; a time to fail corresponding to a difference between a time at which the client initiated the failed request/response pair and a time at which the client determined that the request had failed; and a failure code corresponding to a reason for the failure of the request. column 6, lines 10-31

38.   In regard to claim 50, Desai disclosed:

the performance data block type field indicates that the performance data block body contains

server performance data preference information for a server in a client serer network, and wherein the

performance data block body comprises: an indication of whether to send client-generated performance

data to the server pertaining to client communications with the server; an indication of whether to send

client-generated performance data to the server pertaining to client communications with other servers in

the client server network; and a performance data age threshold beyond which client-stored performance

data should not be sent to the server. column 6, lines 10-31

Claim Rejections - 35 USC § 101

39.   35 U.S.C. 101 reads as follows:

> Whoever invents or discovers any new and useful process, machine, manufacture, or composition of
> matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the
> conditions and requirements of this title.

40.   Claims 34-41 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-

statutory subject matter.

41.   The above claims are software *per se*, and are not embodied on any hardware or storage

medium. Based upon a reading of Applicant's specification, a data store is best interpreted as

encompassing software *per se*. Claims 38-41 are entirely consisting of software modules. Software *per*

se is not patentable. *Parker v. Flook.*

Conclusion

42.   The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

43.   Ehrlich et al.   US 6,598,078

44.   Friedrich et al.   US 5,958,009

45.   Applicant's amendment necessitated the new ground(s) of rejection presented in this Office

action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of

the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeffrey R. Swearingen whose telephone number is (571)272-3921. The examiner can normally be reached on M-F 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jason Cardone can be reached on 571-272-3933. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Jeffrey R. Swearingen
Examiner
Art Unit 2145

/J. R. S./
Examiner, Art Unit 2145

/Jason D Cardone/
Supervisory Patent Examiner, Art Unit 2145